
(2014) 01 DEL CK 0351
In the Delhi High Court
Case No : Mac. App. 375 of 2013

National Insurance Company

APPELLANT

Vs

Swaraj Singh and Others

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Citation : (2014) 1 ACC 684 : (2015) ACJ 1182

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; Rohan Thawani, Ms. Vandana Sehgal and Ms. Kriti Singh Gahlout, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Instant appeal has been preferred against the award dated 22.11.2012, whereby Id. Tribunal has awarded compensation as under:

Ld. Tribunal has also granted interest @ 7.5% from the date of filing of the petition till its realization.

The brief facts of the case are that on 09.06.2010, respondent no. 1/injured was driving a car bearing no. DL-2CW-6859 from Rajinder Nagar, Delhi to Gurgaon, Haryana. On NH-8, one Ankur Anand, who was driving a Swift Car bearing no. DL-2CL-0314 started feeling unwell and losing control of his car. As a result, his car started swerving. Consequently, three cars stopped behind him, i.e. (1) DL-4CR-4903 a Santro Metallic coloured car being driven by Sh. Rohit Gautam, (2) Car no. DL-4C-NE-4664, a Toyota Corolla Altis Golden Metallic Car, and (3) Ascent Car no. DL-2CW-6859, being driven by respondent no. 1/injured in order to avoid hitting the swift car being driven by Sh. Ankur Anand so that no accident could occur.

2. Respondent no. 1/injured had got out of the car to assist Sh. Ankur Anand and also stopped the incoming vehicle on the road to avoid further accident. At that time, a bus no. DL-1PB-7213, being driven by respondent no. 2, Vijay Kumar in a

very rash and negligent manner came, which firstly hit DL-4C-NE-4664, a Toyota Corolla Altis Golden Metallic Car from back and then hit another car DL-4CR-4903 a Santro Metallic coloured car and thereafter hit respondent no. 1/injured, resultantly, caused grievous injuries to him. He was removed to AIIMS for treatment. Thereafter, an FIR no. 151/2010 was registered against the driver of the offending bus with Police Station-Vasant Kunj (South Delhi) on the complaint of Sh. Rohit Gautam, an eye witness of the accident.

3. On being filed the Claim Petition, Id. Tribunal had framed issues as under:

1. Whether injured suffered injuries in the accident on 09.06.2010 involving motor vehicle no. DL-1PB-7213 due to rash and negligence driving of respondent no. 1? OPP

2. Whether petitioner is entitled for compensation? If so, what amount and against which of the respondents? OPP

3. Relief

4. Id. Counsel appearing on behalf of the appellant/insurance company argued that Id. Tribunal, on the one hand had allowed the compensation of Rs. 16,99,200/- on account of artificial limb and on the other hand has assessed the monthly loss of income of the claimant as Rs. 9,000/- per month which is on a higher side.

5. Id. Counsel has argued that Id. Tribunal has failed to appreciate that after fitting of the artificial limb, the loss of earning capacity of the injured would reduce drastically. Thus, the compensation as allowed by the Id. Tribunal is on a higher side.

6. He submitted that as per the disability certificate, keeping in view the injuries received, disability of respondent no. 1/claimant has been assessed as 70%, however, Id. Tribunal has considered the said 70% as functional disability contrary to the principles laid down by the Supreme Court in the case of Raj Kumar Vs. Ajay Kumar and Another, . Id. Counsel submitted that the Id. Tribunal should not have assessed the earning capacity of the claimant more than 40%. The compensation allowed by the Id. Tribunal is on a higher side.

7. Id. Counsel further argued that Id. Tribunal failed to appreciate that the claimant was not in a permanent job, rather he was a driver on a private car. The age of the driver on the date of accident was 29 years. Id. Tribunal, contrary to dictum of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, which has been affirmed by the Apex Court in the case bearing Civil Appeal No. 4646 of 2009, titled as Reshma Kumari & Ors. Vs. Madan Mohan & Anr. delivered in on 02.04.2013, has enhanced the income of the claimant by 30% on account of future prospects in the absence of evidence on record that he was in a permanent job.

8. He further argued that the compensation of Rs. 16,99,200/- as allowed by the

Id. Tribunal on account of the artificial limb for the whole life of the claimant is on a higher side. He submitted, the statutory provisions clearly indicate that the compensation must be "Just" and it cannot be a "Bonanza". There can be no golden rules applicable to all cases for measuring the value of a human life or limb. Every method or mode adopted for assessing the compensation has to be considered in the background of just compensation, which is the pivotal consideration.

9. On perusal of the trial court record, it is established that PW2, Harvinder Singh Narula, employer of injured, has proved his evidence by way of affidavit Ex. PW3/A, whereby deposed that respondent no. 1/injured had been working as a car driver from March, 2010 till the date of accident at a salary of Rs. 10,000/- per month. Further stated that on 09.06.2010 at the time of accident, they were proceeding from his residence towards the office situated at Gurgaon and claimant was driving his car. He was present at the place of occurrence and witnessed the accident. He further stated that due to the accident, the claimant's left leg was amputated above the knee. Thus, he has become unfit for employment as a driver.

10. PW4, Sh. Tarun Kumar from Endolite Prosthetic and Orthotic Centre was examined, who stated that the company deals with fabrication and fitting of artificial limbs. He had produced the price-list of the company published for the year 2012-2013 and stated that the cost of fitting artificial limb on Swaraj Singh, i.e., Standard Trans Femoral System starting from a minimum range of Rs. 1,89,400/- till Rs. 3,51,400/- depending upon the quality of artificial limb. The most expensive limb will allow the patient maximum mobility and activity, whereas least expensive limb will be with lesser mobility and activity. He further stated that it is normally recommended by the company that artificial limb should be replaced every 2-3 years because of wear and tear.

11. It has come on record that respondent no. 1/injured had got down from the car to help another car driver and in the meanwhile, he was hit by a bus, which was being driven by Sh. Vijay Kumar/respondent no. 2. In the said accident, his left leg was badly crushed and as a result, his leg was amputated from the knee which caused him permanently disabled for avocation of driver.

12. Respondent no. 1/injured was born on 12.09.1981 and at the time of accident, he was 29 years of age and was working as a driver on a monthly salary of Rs. 10,000/-. The injured remained hospitalized from 09.06.2010 to 26.06.2010. The medical records proved that the victim took periodical treatment from Ahuja Nursing Home and remained hospitalized from 27.06.2010 to 08.07.2010, 11.07.2010 to 18.07.2010, 23.08.2010 and 29.08.2010.

13. The disability certificate issued by Medical Superintendent of Pandit Madan Mohan Malviya Hospital has assessed the disability of 80% towards left lower limb.

14. Undisputedly, respondent no. 1/injured received grievous injuries due to

which his left lower limb was amputated. It cannot be in dispute that after the amputation of left lower limb, the fixation of Prosthesis is imperative for the victim. The expert from Endolite Prosthetic and Orthotic Centre, who appeared as PW4 deposed with the help of documentary evidence that prosthesis for the victim would range from Rs. 1,18,400 to Rs. 3,51,400/- depending upon the quality of material. He also deposed that the life of artificial limb being four years and extensive prosthesis are more agile.

15. Admittedly, respondent no. 1/injured on the date of the award was 29 years of age. He would require artificial limb of best quality for next 12 years as discussed by the Id. Tribunal. Accordingly, Id. Tribunal has opined as under:-

It is ordered here itself a sum of Rs. 3,51,400/- would be put into FDR for four years and another sum of the same amount for 8 years. After 12 years the victim would require another set of artificial limbs for next 12 years (three sets) but these are awarded at the middle of the range for Rs. 2,15,000 each. Even this amount would be put in the FDR for the next block of four years. The following compensation is awarded for taking care of artificial limb of the victim:

16. As the amount towards artificial limb is concerned, it is important to note that the injured would be able to withdraw the amount as and when the replacement would require. Even otherwise, a person cannot be brought back to his normal life despite the artificial limb. It is only supportive in nature and helps to bring back the normal life to a certain extent.

17. Relying upon the deposition of the expert and with the help of documentary evidence, Id. Tribunal has awarded compensation towards the artificial limb. In view of above discussion, I am of the considered opinion that the amount granted for artificial limb is not on a higher side.

18. It is not in dispute that respondent no. 1/injured was working as a driver on the date of accident and was receiving a salary of Rs. 10,000/- per month, which is not on a higher side by comparing the minimum wages prevailing on the date of accident, therefore, it is justified.

19. While considering the disability, the Tribunal or the Courts has to see what would be the affect of the injuries upon the avocation of the injured.

20. In the present case, respondent no. 1/injured was physically fit at the time of accident. He was working as driver. Due to amputation of his left leg, he has become totally disabled to continue with the same avocation as he was doing earlier. Therefore, keeping in view the facts and circumstances of the case and avocation of the injured, Id. Tribunal has rightly assessed 70% of the functional disability.

21. Moreover, as stated by his employer, he was no more in job after the accident. He needs artificial limb for his movement and only thereafter he would be able to get some employment. Nowadays, it is very difficult to get the employment even for healthy and hearty man and if a person is disabled, firstly

he will not get the employment and if someone keeps him on mercy, he will prefer to give a meagre amount.

22. The age of the victim on the date of accident was 29 years and the Id. Tribunal has added 30% on account of future prospects. The accident took place on 09.06.2010 and the award was passed on 22.11.2010 and we have already entered into 2014. Therefore, 30% on account of future prospects as considered by the Id. Tribunal is not on a higher side.

23. Keeping in view the above discussion, I do not find any merit in the instant appeal and the same is accordingly dismissed.

24. The balance compensation amount shall be released in favour of the respondent no. 1/claimant on taking steps. Statutory amount be released in favour of the appellant.